

Global Response R2: County of San Diego Climate Action Plan

This response addresses comments received on the 2019 Recirculated Portions of the Draft EIR stating that the Otay Ranch Resort Village – Village 13 (proposed Project) is not consistent with the County of San Diego’s Climate Action Plan (CAP).

In order to set the appropriate context, the County released its draft CAP and related Draft Supplemental EIR (SCH No. 2016101055) for public review in August 2017. The final CAP was adopted by the County’s Board of Supervisors in February 2018. In March 2018, lawsuits were filed by numerous environmental organizations and a business entity challenging the County’s adoption of the CAP. In December 2018, the San Diego Superior Court issued a peremptory writ ordering the County to set aside its February 2018 approval of the CAP and certification of the related Supplemental EIR. Resolution of that litigation is anticipated to post-date the County’s consideration of the proposed Project as, in January 2019, the County decided to proceed with an appeal of the Superior Court’s decision that is still pending before the California’s Fourth District Court of Appeal (see *Sierra Club et al. v. County of San Diego* [Case No. D075478]) as of the publication date of this Final EIR.

The Notice of Preparation (NOP) for the proposed Project’s EIR was issued in October 2004. The proposed Project’s Draft EIR was circulated for public review in April and May of 2015, and two sections of the Draft EIR (including the Global Climate Change Section) were recirculated for public review in April and May of 2019.

In light of the CAP’s timeline and because litigation over the CAP was reasonably foreseeable and imminent during preparation of the Project EIR, the CAP was not relied upon or used to establish the analytical framework set forth in Section 2.10, Global Climate Change, of the 2019 Recirculated Portions of the Draft EIR. Notably, CEQA Guidelines Section 15064.4 does not require that the County have an adopted or judicially-validated CAP in place in order to analyze, determine, and mitigate the effects of the proposed Project’s greenhouse gas (GHG) emissions. However, because of the CAP’s uncertain status during the pendency of the judicial appellate proceedings, this response addresses the proposed Project’s consistency with the County’s CAP.

Summary of the County of San Diego’s 2018 Climate Action Plan

As mentioned above, in February 2018, the County’s Board of Supervisors adopted a CAP that serves as a plan to reduce GHG emissions from the unincorporated communities of San Diego County. The Board’s adoption of the CAP is the culmination of a multi-year plan development process that followed from the judicial invalidation (see *Sierra Club v. County of San Diego* [Case No. D064243]) of the County’s prior CAP, which was adopted in 2012.

The purpose of the County’s CAP is to reduce GHG emissions projected to occur from buildout of the County’s 2011 General Plan Update (GPU), as set forth in GPU Policy COS-20.1 and GPU EIR mitigation measures CC-1.2 and CC-1.8.

The CAP includes six chapters: (1) Introduction; (2) Greenhouse Gas Emissions Inventory, Projections, and Reduction Targets; (3) Greenhouse Gas Reduction Strategies and Measures; (4) Climate Change Vulnerability, Resiliency, and Adaptation; (5) Implementation and Monitoring; and, (6) Public Outreach and Engagement.

The CAP also sets the following County-specific GHG reduction targets: by 2020, a 2 percent reduction from 2014 levels; by 2030, a 40 percent reduction from 2014 levels; and, by 2050, a 77 percent reduction from 2014 levels. The CAP is designed to achieve those targets through the implementation of multiple strategies and measures applicable to five general categories of GHG emission sources: (1) Built Environment and Transportation; (2) Energy; (3) Solid Waste; (4) Water and Wastewater; and, (5) Agriculture and Conservation.

The CAP was prepared in accordance with CEQA Guidelines Section 15183.5 in order to afford certain projects the opportunity to use the CAP as a CEQA streamlining tool; specifically, the CAP:

- Describes the existing baseline and projected emissions for 2020, 2030, and 2050 (see CEQA Guidelines Section 15183.5(b)(1)(A));
- Describes the recommended reduction targets for 2020 and 2030, which are designed to be consistent with the recommended community targets in CARB’s 2017 Scoping Plan, the State’s 2014 GHG emissions inventory, and various targets for the reduction of statewide emissions (CEQA Guidelines Section 15183.5(b)(1)(B));
- Describes the specific strategies and actions the County will take to reduce GHG emissions and quantifies the resultant reductions that would be achieved by each strategy/action (CEQA Guidelines Section 15183.5(b)(1)(C)-(D)); and,
- Describes how the County will implement the CAP, monitor its effectiveness, and adaptively manage implementation of specific strategies/actions to achieve reduction targets (CEQA Guidelines Section 15183.5(b)(1)(E)).

The CAP was designed and developed to be an adaptive plan; as progress is made in implementing GHG reduction measures, that progress will be monitored (i.e., reductions achieved will be logged), and an assessment will be made on whether changes to the CAP would be required. The County monitors the overall effectiveness of the CAP through annual progress reports to ensure the CAP continues to make substantial progress toward reduction targets through inventory updates every two years and with updates made to the CAP every five years.

Climate Action Plan Implementing Documents

In conjunction with its adoption of the CAP in February 2018, the County also adopted CEQA implementation tools, including the *Guidelines for Determining Significance: Climate Change* (Guidelines) and *Appendix A: Final Climate Action Plan Consistency Review Checklist* (CAP Consistency Checklist). The Guidelines and CAP Consistency Checklist set forth the following two-step process for determining the significance of GHG emissions at the project level for CEQA purposes (County of San Diego 2018):

- **Step 1:** Step 1 (Land Use Consistency) assesses a project’s consistency with the growth projections and land use assumptions made in the CAP. If a project is consistent with the projections in the CAP, its associated growth (in terms of GHG emissions) was accounted for in the CAP’s emissions projections and would not increase emissions beyond what is anticipated in the CAP or inhibit the County from reaching its reduction targets. If a project is consistent with the existing General Plan land use designation(s), it can be determined to be consistent with the CAP projections and can move forward to Step 2 (CAP Measures Consistency) of the CAP Consistency Checklist. Also, a project that is inconsistent with existing General Plan or zoning designations, but which would

propose an equivalent or less GHG-intensive project than that allowed by existing designations can move to Step 2.

If an amendment is needed to the existing land use and/or zoning designation, and if that land use and/or zoning designation amendment results in a more GHG-intensive project, a project is required to undertake a more detailed, project-level GHG analysis. The project also is required to demonstrate compliance with each of the CAP measures identified in the CAP Consistency Checklist. Additionally, in order to support a determination that such a project would not conflict with the CAP and would not make a cumulatively considerable contribution to global climate change, the project is required to demonstrate that it results either in “no net increase” in GHG emissions from additional density or intensity above that identified in the County’s 2011 General Plan Update or “no net increase over baseline conditions (carbon neutrality).” In doing so, the project must first demonstrate compliance with relevant CAP measures and then achieve any additional needed reductions through on-site design features and mitigation measures, followed by off-site mitigation.

- **Step 2:** Step 2 (CAP Measures Consistency) identifies CAP GHG reduction measures that would apply to discretionary projects and establishes clear questions that can be used to assess a project’s consistency with CAP measures. The specific applicable requirements outlined in the Checklist, shall be required as a condition of project approval. The project must provide substantial evidence that demonstrates how the proposed project would implement each applicable Checklist requirement described in Appendix A to the satisfaction of the Director of Planning & Development Services (PDS). If a question in the Checklist is deemed not applicable (N/A) to a project, substantial evidence must be provided to the satisfaction of the Director of PDS.

Project Consistency with the Climate Action Plan

The proposed Project’s EIR (see Section 2.10 of the 2019 Recirculated Portions of the Draft EIR) did not rely upon, tier from or use the CAP because it was not an applicable plan at the time the NOP was published (see CEQA Guidelines Section 15125) and because litigation and ongoing controversy concerning the adequacy of the CAP was a near certainty. Instead, the EIR identified significance thresholds derived from Appendix G of the CEQA Guidelines and was informed by CEQA Guidelines Section 15064.4. Accordingly, the proposed Project’s Draft EIR does not rely upon, use or tier from the CAP. Although the proposed Project was initiated before the adoption of the CAP and although the CAP may be rescinded by the time the County considers approval of the proposed Project, this response addresses the proposed Project’s consistency with the CAP for informational purposes.

Regarding Step 1, which considers land use consistency, the proposed Project is one component of the Otay Ranch master-planned community, which is regulated by the policies of the County-adopted Otay Ranch General Development Plan/Subregional Plan (GDP/SRP). The underlying purpose of the proposed Project, therefore, is to implement the adopted Otay Ranch GDP/SRP and complete the planned development of Village 13 therein. The Otay Ranch GDP/SRP constitutes Volume II of the County’s Otay Subregional Plan, is part of the County’s General Plan, and allows for 1,938 homes, an 800-room resort hotel and golf course, school, public safety building and 40,000 square feet of commercial/retail uses in Village 13 (see **Appendix C-25** of the EIR).

In the County’s General Plan, the Project Site is designated with Rural and Semi-Rural regional categories and has Specific Plan Area (SPA) and Open Space (Conservation) land use designations. The Project Site is zoned S80 (Open Space) and S88 (Specific Plan) by the County of San Diego Zoning Map. Because the County adopted the Otay Ranch GDP/SRP to govern development within the Otay Ranch area, the land use designations specified in the Otay Ranch GDP/SRP apply. A wide range of land use designations are specified in the Otay Ranch GDP/SRP for the Project Area: Low Density Residential (L), Low Medium Density Residential (LM), Resort, Golf Course Concept Location, Visitor Commercial (VC), Town Center (TC) Park (P), Sensitive Resource Study Area (SRS) and Open Space (OS). The proposed Project would implement development that is consistent with these designations with modifications to eliminate the golf course and provide a different mix of residential product types.

Although it would not increase overall density or intensity, the proposed Project does require several General Plan Amendments (GPAs) as described in Section 1.2.2.2, General Plan Amendment, of the EIR and the Otay Ranch Resort Village General Plan Amendment Report (July 2018). These amendments are technical in nature and pertain to the General’s Land Use Element (zoning category and type of residential uses), Mobility/Circulation Element (alignment of Otay Lakes Road), and Otay SRP (changes to regional planning framework approved by the City of Chula Vista).

In order to assess the proposed Project under Step 1 of the CAP Consistency Checklist, GHG emissions inventories were prepared for both the proposed Project and Alternative B – Existing Otay SRP (see EIR **Appendix C-2** [Global Climate Change Evaluation – Otay Ranch resort Village 13] and **Appendix C-25** [Otay Ranch Resort Village GHG Emissions – Alternative B Memorandum], respectively). Based on those analyses, the proposed Project is less GHG intensive (i.e., emits fewer GHG emissions) than Alternative B, which reflects the existing land use parameters for the Project Site under the County-adopted GDP/SRP incorporated into the General Plan. As such, while the proposed Project would require an amendment to the County’s Land Use Element and zoning, the proposed Project would result in a less GHG-intensive project when compared to the existing designations and, therefore, would not be required to achieve a net zero or no net increase GHG emissions level under the County’s CAP Consistency Checklist. This project includes substantially more mitigation of GHG emissions than if it had relied on the CAP.

The proposed Project’s compliance with Step 2 of the CAP Consistency Checklist is outlined in Attachment GR.R2.1 to this response. As shown in Attachment A, the proposed Project would be consistent with Step 2 of the County’s CAP through its implementation of all applicable CAP reduction measures.

It also is noted that the proposed Project reduces GHG emissions through the use of on-site environmental design considerations (EDCs) and mitigation requirements (the on-site strategies would reduce Project-related GHG emissions by approximately 15 percent), and further reduces emissions beyond those anticipated in the County’s CAP by committing to offset all of its GHG emissions to achieve and maintain carbon neutrality (i.e., net zero emissions) for the life of the project. The proposed Project’s on-site strategies address the primary emissions-generating sources associated with the Project: transportation/vehicle use; the consumption of energy resources by buildings; water consumption; and, solid waste.

Status of the Climate Action Plan and Related Supplemental EIR

As mentioned above, in December 2018, the San Diego Superior Court issued a permanent injunction and peremptory writ of mandate. The writ of mandate orders the County to set aside its approval of the CAP, the related Supplemental EIR, the CAP Consistency Checklist, and Guidelines. The permanent injunction prohibits the County from relying on mitigation measure M-GHG-1 in the CAP's Supplemental EIR when considering General Plan Amendment projects.

Neither the writ of mandate nor the permanent injunction affects the proposed Project because the proposed Project and its EIR do not depend upon the effectiveness of the CAP, the CAP Supplemental EIR or other CAP-related approvals, and do not rely on the CAP Supplemental EIR or its mitigation measure M-GHG-1. In short, the proposed Project and its EIR – including its commitment to net zero GHG emissions – are independent of the CAP and related approvals. Also, the proposed Project does not involve a General Plan Amendment within the CAP Supplemental EIR's category of cumulative projects that may increase density or intensity of land uses in the General Plan.

Accompanying the two orders, the court issued a ruling explaining the court's reasons for concluding that the CAP Supplemental EIR was inadequate – all of which related to mitigation measure M-GHG-1 in the CAP Supplemental EIR.

None of the issues identified in the court's ruling apply to the proposed Project and its EIR as briefly described below:

- Global Response R1: Carbon Offsets (as well as **Appendix E-1** of the EIR) provides evidence and information germane to the County's interpretation of its General Plan. As explained therein, neither Goal COS-20 nor its implementing policies limit the GHG reduction tools available to the County. Instead, facts, law and policy support the use of offsets as a feasible GHG reduction tool.
- The carbon offset-related measures presented in this EIR (see M-GCC-7 and M-GCC-8) contain additional procedures and processes developed for project-level application that ensure the measures comply with all applicable CEQA requirements. As such, the County's policy preference for a locational/geographic priority system when using offsets to reduce GHG emissions will be administered via a set of measured processes and standards. This EIR also addresses, at length, the evidence supporting utilization of a 30-year mitigation period, as well as the standards in place to ensure that the offsets are verifiable and enforceable. (See Global Response: Carbon Offsets.)
- This EIR fully analyzes the proposed Project's impacts at the project level. Information regarding the Project's energy impacts is located in Section 3.9, Energy Use and Conservation, of the 2015 Draft EIR. Information regarding VMT can be found in **Appendix E and F of Appendix C-2**.¹ And, information regarding the Project's potential to conflict with SANDAG's RTP/SCS can be found in Section 2.10, Global Climate Change, of the 2019 Recirculated Portions of the Draft EIR. As to the subject of environmental justice, there are no environmental justice or disadvantaged communities in close proximity to the Project Site. Further, because GHG emissions do not result in localized impacts, the location of the GHG reduction activity is of no consequence to such communities. As to co-benefits from localized GHG reduction project options, the Project's air

¹ While this EIR contains VMT analysis conducted pursuant to SB 743, that analysis is for information purposes only. The amendments to the CEQA Guidelines implementing the legislative direction set forth in SB 743 were adopted in December 2018; and, the new, SB 743-related, VMT provisions of the CEQA Guidelines do not become effective statewide until July 1, 2020.

quality impacts are being mitigated to the greatest extent feasible, as discussed in Section 2.2, Air Quality, of the 2015 Draft EIR.

- This EIR studied a reasonable range of potentially feasible alternatives, including alternative project locations, in Section 4.0, Alternatives, of the 2019 Recirculated Portions of the Draft EIR. The EIR also considered alternative/additional GHG emissions-reducing strategies recommended during the public review period on the EIR; for example, please see Responses to Comments A-4-16, O-14-11, O-14-31, RO-6-61, RO-6-107.
- The EIR contains a comprehensive set of thematic and individual responses that address the environmental issues raised during the public review period on the Draft EIR.

Relationship of the Project's EIR to the Climate Action Plan

It is important to note that the CEQA analysis prepared for the proposed Project's EIR did not use, rely on, or tier from the CAP to streamline the Project's environmental analysis. Rather, as discussed above, the EIR rendered significance determinations (using the criteria contained in CEQA Guidelines Appendix G, and informed by CEQA Guidelines Sections 15064.4 and 15126.4) that are independent of the CAP. As such, regardless of the CAP's effectiveness (which will be determined at the conclusion of the pending judicial appellate proceedings), the Project's EIR provides a separate, stand-alone basis for the finding that the proposed Project's GHG emissions would not significantly impact the environment, with implementation of its own EDCs and mitigation measures.²

On this point, the County notes that the commitment of the proposed Project to achieve carbon neutrality, and the EIR's corresponding basis to determine that impacts would be less than significant with mitigation, is supported by CEQA, State guidance, and case law. For example, the overall approach presented in the proposed Project's EIR (i.e., attainment of net zero GHG emissions through utilization of a portfolio of on- and off-site reduction strategies) accords to the approach developed by the State of California (and specifically the California Department of Fish and Wildlife and California Air Resources Board) for the Newhall Ranch Project and AB 900 projects, as well as the approach described for project-level CEQA analysis by the California Air Resources Board in its adopted *California's 2017 Climate Change Scoping Plan*. Further, the net zero mitigation framework provided in the Project's EIR exceeds the requirements of the County's CAP Consistency Checklist, which would only require the Project to implement the design-related reduction measures contained therein to substantiate a determination that Project impacts would be less than significant. As explained above, this is because the Project – as proposed – would result in a less GHG intensive land use development project than already is allowed by the existing General Plan land use framework (see EIR **Appendix C-25**), which reflects the County's 1993 adoption of the GDP/SRP including its development of the Project Site.

² For additional information on this point, please see Attachment GR.R2.2 of these Responses to Comments, which contains a copy of Appendix 8-4 from the certified Otay Ranch Village 14 and Planning Areas 16/19 Project Final EIR (SCH No. 2016121042)(May 2019). Appendix 8-4 contains the County's response to comments suggesting that the County cannot consider General Plan Amendment projects until final resolution of the CAP litigation.

Attachment GR.R2.1



Permit Number: _____

COUNTY OF SAN DIEGO
LAND USE AND ENVIRONMENT GROUP
Department of Planning & Development Services

Appendix A: Final Climate Action Plan

Consistency Review Checklist

Introduction

The County of San Diego (County) Climate Action Plan (CAP), adopted by the Board of Supervisors on February 14, 2018, outlines actions that the County will undertake to meet its greenhouse gas (GHG) emissions reduction targets. Implementation of the CAP will require that new development projects incorporate more sustainable design standards and implement applicable reduction measures consistent with the CAP. To help plan and design projects consistent with the CAP, and to assist County staff in implementing the CAP and determining the consistency of proposed projects with the CAP during development review, the County has prepared a CAP Consistency Review Checklist (Checklist). This Checklist, in conjunction with the CAP, provides a streamlined review process for proposed discretionary projects that require environmental review pursuant to the California Environmental Quality Act (CEQA). Please refer to the County's Guidelines for Determining Significance for Climate Change (Guidelines) for more information on GHG emissions, climate change impact requirements, thresholds of significance, and compliance with CEQA Guidelines Section 15183.5.

The purpose of this Checklist is to implement GHG reduction measures from the CAP that apply to new development projects. The CAP presents the County's comprehensive strategy to reduce GHG emissions to meet its reduction targets. These reductions will be achieved through a combination of County initiatives and reduction actions for both existing and new development. Reduction actions that apply to existing and new development will be implemented through a combination of mandatory requirements and incentives. This Checklist specifically applies to proposed discretionary projects that require environmental review pursuant to CEQA. Therefore, the Checklist represents one implementation tool in the County's overall strategy to implement the CAP. Implementation of measures that do not apply to new development projects will occur through the implementation mechanisms identified in Chapter 5 of the CAP. Implementation of applicable reduction measures in new development projects will help the County achieve incremental reductions towards its targets, with additional reductions occurring through County initiatives and measures related to existing development that are implemented outside of the Checklist process.

The Checklist follows a two-step process to determine if projects are consistent with the CAP and whether they may have a significant cumulative impact under the County's adopted GHG thresholds of significance. The Checklist first assesses a project's consistency with the growth projections and land use assumptions that formed the basis of CAP emissions projections. If a project is consistent with the projections and land use assumptions in the CAP, its associated growth in terms of GHG emissions would have been accounted for in the CAP's projections and project implementation of the CAP reduction measures will contribute towards reducing the County's emissions and meeting the County's reduction targets. Projects that include a land use plan and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project

when compared to existing designation, would also be within the projections assumed in the CAP. Projects responding in the affirmative to Step 1 questions can move forward to Step 2 of the Checklist. If a land use and/or zoning designation amendment results in a more GHG-intensive project, the project is required to demonstrate consistency with applicable CAP measures and offset the increase in emissions as described in the Guidelines. Step 2 of the Checklist contains the CAP GHG reduction measures that projects are required to implement to ensure compliance with the CAP. Implementation of these measures would ensure that new development is consistent with relevant CAP strategies and measures and will contribute towards achieving the identified GHG reduction targets. Projects that are consistent with the CAP, as determined using this Checklist, may rely on the CAP for the cumulative impacts analysis of GHG emissions under CEQA.

A project's incremental contribution to cumulative GHG emissions may be determined to not be cumulatively considerable if it is determined to be consistent with the CAP. As specified in the CEQA Guidelines, the mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the project's incremental effects are "cumulatively considerable" (CCR, Title 14, Division 6, Chapter 3, Section 15064[h][4]). Projects requiring discretionary review that cannot demonstrate consistency with the CAP using this Checklist may have a cumulatively considerable contribution to a significant cumulative impact and would be required to prepare a separate, more detailed project-level GHG analysis as part of the CEQA document prepared for the project.

Checklist Applicability

This Checklist only applies to development projects that require discretionary review and are subject to environmental review (i.e., not statutorily or categorically exempt projects) pursuant to CEQA. Projects that are limited to ministerial review and approval (e.g., only building permits) would not be subject to the Checklist. The CAP contains other measures that, when implemented, would apply broadly to all ministerial and discretionary projects. These measures are included for discretionary projects in this Checklist, but could also apply more broadly once the County takes action to codify specific requirements or standards.

Checklist Procedures

General procedures for Checklist compliance and review are described below. Specific guidance is also provided under each of the questions under Steps 1 and 2 of the Checklist in subsequent pages.

1. The County's Department of Planning & Development Services (PDS) reviews development applications and makes determinations regarding environmental review requirements under CEQA. Procedures for CEQA can be found on the County's [Process Guidance & Regulations/Statutes Homepage](#). The Director of PDS will determine whether environmental review is required, and if so, whether completion of the CAP Checklist is required for a proposed project or whether a separate project-level GHG analysis is required.
2. The specific applicable requirements outlined in the Checklist shall be required as a condition of project approval.
3. The project must provide substantial evidence that demonstrates how the proposed project will implement each applicable Checklist requirement described herein to the satisfaction of the Director of PDS.
4. If a question in the Checklist is deemed not applicable (N/A) to a project, substantial evidence shall be provided to the satisfaction of the Director of PDS demonstrating why the Checklist item is not applicable. Feasibility of reduction measures for new projects was assessed in development of the

CAP and measures determined to be feasible were incorporated into the Checklist. Therefore, it is expected that projects would have the ability to comply with all applicable Checklist measures.

5. Development projects requiring discretionary review that cannot demonstrate consistency with the CAP using this Checklist shall prepare a separate, project-level GHG analysis as part of the CEQA document prepared for the project and may be required to prepare an Environmental Impact Report (EIR). Guidance for project-specific GHG Technical Reports is outlined in the Report Format and Content Requirements for Climate Change document, provided under separate cover. The Report Format and Content Requirements document provides guidance on the outline and content of GHG analyses for discretionary projects processed by PDS that cannot show compliance with the CAP Checklist.

Checklist Updates

The Guidelines and Checklist may be administratively updated by the County from time to time to comply with amendments to State laws or court directives, or to remove measures that may become mandatory through future updates to State or local codes. Administrative revisions to the Guidelines and Checklist will be limited to changes that do not trigger a subsequent EIR or a supplement to the SEIR for the CAP pursuant to CEQA Guidelines Section 15162. Administrative revisions, as described above, will not require approval by the Board of Supervisors (Board). All other changes to the Guidelines and Checklist require Board approval.

Comprehensive updates to the Guidelines and Checklist will be coordinated with each CAP update (i.e., every five years beginning in 2025) and would require Board approval. Future updates of the CAP, Guidelines, and Checklist shall comply with CEQA.

Application Information

Contact Information

Project No. and Name: _____
Property Address and
APN: _____

Applicant Name and Co.: _____

Contact Phone: _____ Contact Email: _____

Was a consultant retained to complete this checklist? ☐ Yes ☐ No

If Yes, complete the following:

Consultant Name: _____ Contact
Phone: _____

Company Name: _____ Contact Email: _____

Project Information

1. What is the size of the project site (acres [gross and net])? _____

2. Identify all applicable proposed land uses (indicate square footage [gross and net]):

☐ Residential (indicate # of single-family dwelling units): _____

☐ Residential (indicate # of multi-family dwelling units): _____

☐ Commercial (indicate total square footage [gross and net]): _____

☐ Industrial (indicate total square footage [gross and net]): _____

☐ Agricultural (indicate total acreage [gross and net]): _____

☐ Other (describe): **public safety** **gross: 91,476 / net: 10,000**
elementary school **gross: 435,600 / net: 90,000**

3. Provide a description of the project proposed. This description should match the project description used for the CEQA document. The description may be attached to the Checklist if there are space constraints.

CAP Consistency Checklist Questions

Step 1: Land Use Consistency

For projects that are subject to CAP consistency review, the first step in determining consistency is to assess the project's consistency with the growth projections used in the development of the CAP. This section allows the County to determine a project's consistency with the land use assumptions used in the CAP.

Step 1: Land Use Consistency		
Checklist Item (Check the appropriate box and provide explanation and supporting documentation for your answer)	Yes	No
<p>1. Is the proposed project consistent with the existing General Plan regional category, land use designations, and zoning designations?</p> <p style="margin-top: 20px;">If "Yes," provide substantiation below and then proceed to Step 2 (CAP Measures Consistency) of the Checklist.</p> <p style="margin-top: 20px;">If "No," proceed to question 2 below.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Project Detail: Please substantiate how the project satisfies question 1.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
<p>2. Does the project include a land use element and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project when compared to the existing designations?</p> <p style="margin-top: 20px;">If "Yes," the project must provide estimated project GHG emissions under both existing and proposed designation(s) for comparison to substantiate the response and proceed to Step 2 (CAP Measures Consistency) of the Checklist.</p> <p style="margin-top: 20px;">If "No," (i.e., the project proposes an increase in density or intensity above that which is allowed under existing General Plan designations and consequently would not result in an equivalent or less GHG-intensive project when compared to the existing designations), the project must prepare a separate, more detailed project-level GHG analysis. As outlined in the County's Guidelines for Determining Significance for Climate Change and Report Format and Content Requirements for Climate Change, this analysis must demonstrate how the project would offset the increase in GHG emissions over the existing designations or baseline conditions. The project must also incorporate each of the CAP measures identified in Step 2 to mitigate cumulative GHG emissions impacts. Proceed and complete a separate project-specific GHG analysis and Step 2 of the Checklist. Refer to Section 4 of the County's Guidelines for procedures on analyzing General Plan Amendments.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Project Detail: Please substantiate how the project satisfies question 2.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		

Step 2: CAP Measures Consistency

The second step of the CAP consistency review is to review and evaluate a project's consistency with the applicable measures of the CAP. Each checklist item is associated with a specific GHG reduction measure(s) in the County CAP.

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Step 2A: Project Operations (All projects with an operational component must fill out this portion of the Checklist)				
Reducing Vehicle Miles Traveled				
<p>1a. Reducing Vehicle Miles Traveled</p> <p><u>Non-Residential:</u> For non-residential projects with anticipated tenant-occupants of 25 or more, will the project achieve a 15% reduction in emissions from commute vehicle miles traveled (VMT), and commit to monitoring and reporting results to demonstrate on-going compliance? VMT reduction may be achieved through a combination of Transportation Demand Management (TDM) and parking strategies, as long as the 15% reduction can be substantiated.</p> <p>VMT reduction actions though TDM may include, but are not limited to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Telecommuting <input type="checkbox"/> Car Sharing <input type="checkbox"/> Shuttle Service <input type="checkbox"/> Carpools <input type="checkbox"/> Vanpools <input type="checkbox"/> Bicycle Parking Facilities <input type="checkbox"/> Transit Subsidies <p>Shared and reduced parking strategies may include, but are not limited to:¹</p> <ul style="list-style-type: none"> <input type="checkbox"/> Shared parking facilities <input type="checkbox"/> Carpool/vanpool-only parking spaces <input type="checkbox"/> Shuttle facilities <input type="checkbox"/> Electric Vehicle-only parking spaces <p>The project may incorporate the measures listed above, and propose additional trip reduction measures, as long as a 15% reduction in emissions from commute VMT can be demonstrated through substantial evidence.</p> <p>Check "N/A" if the project is a residential project or if the project would not accommodate more than 25 tenant-occupants.</p>	T-2.2 and T-2.4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>1b. Project Detail:</p> <p>Please substantiate how the project satisfies question 1a.</p> <hr/> <hr/> <hr/> <hr/>				

¹ Reduction actions and strategies under 1a may be used to achieve a 10% reduction in emissions from commute VMT under 2a

Step 2: CAP Measures Consistency

Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
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Shared and Reduced Parking

2a. Shared and Reduced Parking

Non-Residential: For non-residential projects with anticipated tenant-occupants of 24 or less, will the project implement shared and reduced parking strategies that achieves a 10% reduction in emissions from commute VMT?

Shared and reduced parking strategies may include, but are not limited to:

- ☐ Shared parking facilities
- ☐ Carpool/vanpool-only parking spaces
- ☐ Shuttle facilities
- ☐ Electric Vehicle-only parking spaces

Check "N/A" if the project is a residential project or if the project would accommodate 25 or more tenant-occupants.

T-2.4

☐
☐
☐

2b. Project Detail:

Please substantiate how the project satisfies question 2a.

Water Heating Systems

3a. Electric or Alternately-Fueled Water Heating Systems

Residential: For projects that include residential construction, will the project, as a condition of approval, install the following types of electric or alternatively-fueled water heating system(s)? Please check which types of system(s) will be installed:

- ☐ Solar thermal water heater
- ☐ Tankless electric water heater
- ☐ Storage electric water heaters
- ☐ Electric heat pump water heater
- ☐ Tankless gas water heater
- ☐ Other

Check "N/A" if the project does not contain any residential buildings.

E-1.2

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3b. Project Detail:

Please substantiate how the project satisfies question 3a.

Step 2: CAP Measures Consistency

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Water-Efficient Appliances and Plumbing Fixtures				
<p>4a. Water Efficient Appliances and Plumbing Fixtures</p> <p><u>Residential:</u> For new residential projects, will the project comply with all of the following water efficiency and conservation BMPs²?</p> <p><input type="checkbox"/> Kitchen Faucets: The maximum flow rate of kitchen faucets shall not exceed 1.5 gallons per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons per minute at 60 psi, and must default to a maximum flow rate of 1.5 gallons per minute at 60 psi³.</p> <p><input type="checkbox"/> Energy Efficient Appliances: Install at least one qualified ENERGY STAR dishwasher or clothes washer per unit.</p> <p>Check "N/A" if the project is a non-residential project.</p>	W-1.1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4b. Project Detail:</p> <p>Please substantiate how the project satisfies question 4a.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				
Rain Barrel Installations				
<p>5a. Rain Barrel Installations</p> <p><u>Residential:</u> For new residential projects, will the project make use of incentives to install one rain barrel per every 500 square feet of available roof area?</p> <p>Check "N/A" if the project is a non-residential project; if State, regional or local incentives/rebates to purchase rain barrels are not available; or if funding for programs/rebates has been exhausted.</p>	W-2.1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5b. Project Detail:</p> <p>Please substantiate how the project satisfies question 5a.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				

² CALGreen Tier 1 residential voluntary measure A4.303 of the [California Green Building Standards Code](#).

³ Where complying faucets are unavailable, aerators or other means may be used to achieve reduction.

Step 2: CAP Measures Consistency

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Reduce Outdoor Water Use				
<p>6a. Reduce Outdoor Water Use</p> <p><u>Residential:</u> Will the project submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance⁴ and demonstrates a 40% reduction in current Maximum Applied Water Allowance (MAWA) for outdoor use?</p> <p><u>Non-Residential:</u> Will the project submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance and demonstrates a 40% reduction in current MAWA for outdoor use?</p> <p>Check "N/A" if the project does not propose any landscaping, or if the aggregate landscaped area is between 500 – 2,499 square feet and elects to comply with the Prescriptive Compliance Option within the Water Conservation in Landscaping Ordinance.</p>	W-1.2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6b. Project Detail: Please substantiate how the project satisfies question 6a.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				
Agricultural and Farming Operations⁵				
<p>7a. Agricultural and Farming Equipment</p> <p>Will the project use the San Diego County Air Pollution Control District's (SDAPCD's) farm equipment incentive program to convert gas- and diesel-powered farm equipment to electric equipment?</p> <p>Check "N/A" if the project does not contain any agricultural or farming operations; if the SDAPCD incentive program is no longer available; or if funding for the incentive program has been exhausted.</p>	A-1.1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>7b. Project Detail: Please substantiate how the project satisfies question 7a.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				

⁴ <http://www.sandiegocounty.gov/content/dam/sdc/cob/ordinances/ord10427.pdf>.

⁵ Existing agricultural operations would not be subject to questions 7 and 8 of the Checklist, unless a proposed expansion is subject to discretionary review and requires environmental review pursuant to CEQA.

Step 2: CAP Measures Consistency

Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
<p>8a. Electric Irrigation Pumps</p> <p>Will the project use SDAPCD's farm equipment incentive program to convert diesel- or gas-powered irrigation pumps to electric irrigation pumps?</p> <p>Check "N/A" if the project does not contain any agricultural or farming operations; if the SDAPCD incentive program is no longer available; or if funding for the incentive program has been exhausted.</p>	A-1.2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8b. Project Detail:
Please substantiate how the project satisfies question 8a.

Tree Planting

<p>9a. Tree Planting</p> <p><u>Residential</u>: For residential projects, will the project plant, at a minimum, two trees per every new residential dwelling unit proposed?</p> <p>Check "N/A" if the project is a non-residential project.</p>	A-2.1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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9b. Project Detail:
Please substantiate how the project satisfies question 9a.

ATTACHMENT

CAP Measure 1a

The Proposed Project would result in 92,697,928 total annual vehicle miles traveled (VMT) before implementation of the identified transportation demand management strategies (Global Climate Change Analysis, Appendix A). According to the Fehr & Peers study (Global Climate Change Analysis, Appendix A), the Proposed Project would employ 382 people who would account for 5% of the entire VMT. In addition, the Proposed Project would employ 65 employees at the elementary school and 5 public service employees (four firefighters and one sheriff). The employees account for 5.99% of the total VMT. The Proposed Project's commute-related trips, therefore, would result in approximately 5,552,606 annual VMT. A 15% reduction for all commute-related VMT, as required by Measure 1a in the CAP Consistency Checklist, would be equal to approximately 1,388,151 annual VMT. As detailed in Table 1 below, TDM Measures 1 and 8 result in a 5.1% project-wide VMT reduction, which equates to an annual VMT reduction of approximately 4,727,594 and thereby exceeds the commute-related VMT reduction requirements of CAP Measure 1a.

Table 1
Proposed Project VMT Reductions Applicable to Project Non-Residential Land Uses

TDM Measure #	Transportation Demand Management Strategies	Non-Residential % VMT Reduction
1	Land Use Diversity	5%
2	Pedestrian/Bicyclist Trails Network	NA
3	Traffic Calming Features	NA
4	TDM Program Marketing for Residents	NA
5	School Pool Program	NA
6	Walking School Bus Program	NA
7	Resort Guest Bike Share Program	NA
8	TDM Program Marketing for Employees	0.1%
	Total VMT Reduction %	5.1%
	Total Proposed Project Annual VMT Reduction	4,727,594

Source: Fehr & Peers, Otay Ranch Village 13 TDM Program – VMT Reduction Evaluation. Appendix A, Global Climate Change Evaluation, Otay Ranch Resort Village Specific Plan

Notes: % = percent; NA = not applicable; VMT = vehicle miles traveled; TDM = Transportation Demand Management.



COUNTY OF SAN DIEGO
LAND USE AND ENVIRONMENT GROUP
Department of Planning & Development Services

Appendix A: Final Climate Action Plan

Consistency Review Checklist

Introduction

The County of San Diego (County) Climate Action Plan (CAP), adopted by the Board of Supervisors on February 14, 2018, outlines actions that the County will undertake to meet its greenhouse gas (GHG) emissions reduction targets. Implementation of the CAP will require that new development projects incorporate more sustainable design standards and implement applicable reduction measures consistent with the CAP. To help plan and design projects consistent with the CAP, and to assist County staff in implementing the CAP and determining the consistency of proposed projects with the CAP during development review, the County has prepared a CAP Consistency Review Checklist (Checklist). This Checklist, in conjunction with the CAP, provides a streamlined review process for proposed discretionary projects that require environmental review pursuant to the California Environmental Quality Act (CEQA). Please refer to the County's Guidelines for Determining Significance for Climate Change (Guidelines) for more information on GHG emissions, climate change impact requirements, thresholds of significance, and compliance with CEQA Guidelines Section 15183.5.

The purpose of this Checklist is to implement GHG reduction measures from the CAP that apply to new development projects. The CAP presents the County's comprehensive strategy to reduce GHG emissions to meet its reduction targets. These reductions will be achieved through a combination of County initiatives and reduction actions for both existing and new development. Reduction actions that apply to existing and new development will be implemented through a combination of mandatory requirements and incentives. This Checklist specifically applies to proposed discretionary projects that require environmental review pursuant to CEQA. Therefore, the Checklist represents one implementation tool in the County's overall strategy to implement the CAP. Implementation of measures that do not apply to new development projects will occur through the implementation mechanisms identified in Chapter 5 of the CAP. Implementation of applicable reduction measures in new development projects will help the County achieve incremental reductions towards its targets, with additional reductions occurring through County initiatives and measures related to existing development that are implemented outside of the Checklist process.

The Checklist follows a two-step process to determine if projects are consistent with the CAP and whether they may have a significant cumulative impact under the County's adopted GHG thresholds of significance. The Checklist first assesses a project's consistency with the growth projections and land use assumptions that formed the basis of CAP emissions projections. If a project is consistent with the projections and land use assumptions in the CAP, its associated growth in terms of GHG emissions would have been accounted for in the CAP's projections and project implementation of the CAP reduction measures will contribute towards reducing the County's emissions and meeting the County's reduction targets. Projects that include a land use plan and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project

when compared to existing designation, would also be within the projections assumed in the CAP. Projects responding in the affirmative to Step 1 questions can move forward to Step 2 of the Checklist. If a land use and/or zoning designation amendment results in a more GHG-intensive project, the project is required to demonstrate consistency with applicable CAP measures and offset the increase in emissions as described in the Guidelines. Step 2 of the Checklist contains the CAP GHG reduction measures that projects are required to implement to ensure compliance with the CAP. Implementation of these measures would ensure that new development is consistent with relevant CAP strategies and measures and will contribute towards achieving the identified GHG reduction targets. Projects that are consistent with the CAP, as determined using this Checklist, may rely on the CAP for the cumulative impacts analysis of GHG emissions under CEQA.

A project's incremental contribution to cumulative GHG emissions may be determined to not be cumulatively considerable if it is determined to be consistent with the CAP. As specified in the CEQA Guidelines, the mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the project's incremental effects are "cumulatively considerable" (CCR, Title 14, Division 6, Chapter 3, Section 15064[h][4]). Projects requiring discretionary review that cannot demonstrate consistency with the CAP using this Checklist may have a cumulatively considerable contribution to a significant cumulative impact and would be required to prepare a separate, more detailed project-level GHG analysis as part of the CEQA document prepared for the project.

Checklist Applicability

This Checklist only applies to development projects that require discretionary review and are subject to environmental review (i.e., not statutorily or categorically exempt projects) pursuant to CEQA. Projects that are limited to ministerial review and approval (e.g., only building permits) would not be subject to the Checklist. The CAP contains other measures that, when implemented, would apply broadly to all ministerial and discretionary projects. These measures are included for discretionary projects in this Checklist, but could also apply more broadly once the County takes action to codify specific requirements or standards.

Checklist Procedures

General procedures for Checklist compliance and review are described below. Specific guidance is also provided under each of the questions under Steps 1 and 2 of the Checklist in subsequent pages.

1. The County's Department of Planning & Development Services (PDS) reviews development applications and makes determinations regarding environmental review requirements under CEQA. Procedures for CEQA can be found on the County's [Process Guidance & Regulations/Statutes Homepage](#). The Director of PDS will determine whether environmental review is required, and if so, whether completion of the CAP Checklist is required for a proposed project or whether a separate project-level GHG analysis is required.
2. The specific applicable requirements outlined in the Checklist shall be required as a condition of project approval.
3. The project must provide substantial evidence that demonstrates how the proposed project will implement each applicable Checklist requirement described herein to the satisfaction of the Director of PDS.
4. If a question in the Checklist is deemed not applicable (N/A) to a project, substantial evidence shall be provided to the satisfaction of the Director of PDS demonstrating why the Checklist item is not applicable. Feasibility of reduction measures for new projects was assessed in development of the

CAP and measures determined to be feasible were incorporated into the Checklist. Therefore, it is expected that projects would have the ability to comply with all applicable Checklist measures.

5. Development projects requiring discretionary review that cannot demonstrate consistency with the CAP using this Checklist shall prepare a separate, project-level GHG analysis as part of the CEQA document prepared for the project and may be required to prepare an Environmental Impact Report (EIR). Guidance for project-specific GHG Technical Reports is outlined in the Report Format and Content Requirements for Climate Change document, provided under separate cover. The Report Format and Content Requirements document provides guidance on the outline and content of GHG analyses for discretionary projects processed by PDS that cannot show compliance with the CAP Checklist.

Checklist Updates

The Guidelines and Checklist may be administratively updated by the County from time to time to comply with amendments to State laws or court directives, or to remove measures that may become mandatory through future updates to State or local codes. Administrative revisions to the Guidelines and Checklist will be limited to changes that do not trigger a subsequent EIR or a supplement to the SEIR for the CAP pursuant to CEQA Guidelines Section 15162. Administrative revisions, as described above, will not require approval by the Board of Supervisors (Board). All other changes to the Guidelines and Checklist require Board approval.

Comprehensive updates to the Guidelines and Checklist will be coordinated with each CAP update (i.e., every five years beginning in 2025) and would require Board approval. Future updates of the CAP, Guidelines, and Checklist shall comply with CEQA.

Application Information

Contact Information

Project No. and Name: Otay Ranch Resort Village (Alternative H)
 Property Address and APN: Village 13 of Otay SRP's Proctor Valley Parcel
 Applicant Name and Co.: Baldwin & Sons, LLC and Moller Otay Lake Investments, LLC (contact: Eric Johnston)
 Contact Phone: 619-515-9119 Contact Email: ejohnston@baldwinsons.com

Was a consultant retained to complete this checklist? ☐ Yes ☒ No
 If Yes, complete the following:

Consultant Name: _____ Contact Phone: _____
 Company Name: _____ Contact Email: _____

Project Information

1. What is the size of the project site (acres [gross and net])? gross: 1,869 / net: 762
2. Identify all applicable proposed land uses (indicate square footage [gross and net]):
 - ☒ Residential (indicate # of single-family dwelling units): 1,881
 - ☒ Residential (indicate # of multi-family dwelling units): 57
 - ☒ Commercial (indicate total square footage [gross and net]): gross: 879,912 / net: 290,000
 - ☐ Industrial (indicate total square footage [gross and net]): _____
 - ☐ Agricultural (indicate total acreage [gross and net]): _____
 - ☒ Other (describe): public safety gross: 91,476 / net: 10,000
HOA gross: 260,489 / net: 10,000
elementary school gross: 435,600 / net: 90,000

3. Provide a description of the project proposed. This description should match the project description used for the CEQA document. The description may be attached to the Checklist if there are space constraints.

The Otay Ranch Resort Village proposes to develop a community of single-family and multi-family residences that would be served by neighborhood commercial uses, a resort hotel with related amenities, park and recreational uses, and a public safety site and elementary school. The proposed land use plan is anchored by the location of three significant activity centers: (1) Resort Planning Area, (2) Mixed-Use Planning Area, and (3) Village Core Planning Area. The proposal includes transportation and utility-related infrastructure needed to serve the community and includes open space and preserve land in accordance with the principles and requirements of the Otay SRP. The proposed community is intended to complete the planned development of an Otay Ranch-designated specialty village. Additional information regarding the proposed community can be found in Chapter 1.0, Project Description, Location and Environmental Setting, of its EIR.

CAP Consistency Checklist Questions

Step 1: Land Use Consistency

For projects that are subject to CAP consistency review, the first step in determining consistency is to assess the project's consistency with the growth projections used in the development of the CAP. This section allows the County to determine a project's consistency with the land use assumptions used in the CAP.

Step 1: Land Use Consistency		
Checklist Item (Check the appropriate box and provide explanation and supporting documentation for your answer)	Yes	No
<p>1. Is the proposed project consistent with the existing General Plan regional category, land use designations, and zoning designations?</p> <p>If "Yes," provide substantiation below and then proceed to Step 2 (CAP Measures Consistency) of the Checklist.</p> <p>If "No," proceed to question 2 below.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Project Detail:</p> <p>Please substantiate how the project satisfies question 1.</p> <p>Alternative H does require several General Plan Amendments (GPAs) as described in Section 1.2.2.2, General Plan Amendment, of the EIR and the Otay Ranch Resort Village General Plan Amendment Report (July 2018). These amendments are technical in nature and pertain to the General Plan's Land Use Element (development footprint, zoning category and type of residential uses), Mobility/Circulation Element (alignment of Otay Lakes Road), and Otay SRP (changes to regional planning framework approved by the City of Chula Vista).</p>		
<p>2. Does the project include a land use element and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project when compared to the existing designations?</p> <p>If "Yes," the project must provide estimated project GHG emissions under both existing and proposed designation(s) for comparison to substantiate the response and proceed to Step 2 (CAP Measures Consistency) of the Checklist.</p> <p>If "No," (i.e., the project proposes an increase in density or intensity above that which is allowed under existing General Plan designations and consequently would not result in an equivalent or less GHG-intensive project when compared to the existing designations), the project must prepare a separate, more detailed project-level GHG analysis. As outlined in the County's Guidelines for Determining Significance for Climate Change and Report Format and Content Requirements for Climate Change, this analysis must demonstrate how the project would offset the increase in GHG emissions over the existing designations or baseline conditions. The project must also incorporate each of the CAP measures identified in Step 2 to mitigate cumulative GHG emissions impacts. Proceed and complete a separate project-specific GHG analysis and Step 2 of the Checklist. Refer to Section 4 of the County's Guidelines for procedures on analyzing General Plan Amendments.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Project Detail:</p> <p>Please substantiate how the project satisfies question 2.</p> <p>In order to assess the proposed Project under Step 1 of the CAP Consistency Checklist, GHG emissions inventories were prepared for both Alternative H and Alternative B – Existing Otay SRP (see EIR Appendix C-2 [Global Climate Change Evaluation – Otay Ranch Resort Village 13] and Appendix C-25 [Otay Ranch Resort Village GHG Emissions – Alternative B Memorandum], respectively). Based on those analyses, Alternative H is less GHG intensive (i.e., emits fewer GHG emissions) than Alternative B, which reflects the existing land use parameters for the Project Site under the County-adopted GDP/SRP incorporated into the General Plan. Alternative H's compliance with Step 2 of the CAP Consistency Checklist is outlined in Attachment A to this response and is consistent through its implementation of all applicable CAP reduction measures.</p>		

Step 2: CAP Measures Consistency

The second step of the CAP consistency review is to review and evaluate a project's consistency with the applicable measures of the CAP. Each checklist item is associated with a specific GHG reduction measure(s) in the County CAP.

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Step 2A: Project Operations (All projects with an operational component must fill out this portion of the Checklist)				
Reducing Vehicle Miles Traveled				
<p>1a. Reducing Vehicle Miles Traveled</p> <p><u>Non-Residential:</u> For non-residential projects with anticipated tenant-occupants of 25 or more, will the project achieve a 15% reduction in emissions from commute vehicle miles traveled (VMT), and commit to monitoring and reporting results to demonstrate on-going compliance? VMT reduction may be achieved through a combination of Transportation Demand Management (TDM) and parking strategies, as long as the 15% reduction can be substantiated.</p> <p>VMT reduction actions though TDM may include, but are not limited to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Telecommuting <input type="checkbox"/> Car Sharing <input type="checkbox"/> Shuttle Service <input type="checkbox"/> Carpools <input type="checkbox"/> Vanpools <input type="checkbox"/> Bicycle Parking Facilities <input type="checkbox"/> Transit Subsidies <p>Shared and reduced parking strategies may include, but are not limited to:¹</p> <ul style="list-style-type: none"> <input type="checkbox"/> Shared parking facilities <input type="checkbox"/> Carpool/vanpool-only parking spaces <input type="checkbox"/> Shuttle facilities <input type="checkbox"/> Electric Vehicle-only parking spaces <p>The project may incorporate the measures listed above, and propose additional trip reduction measures, as long as a 15% reduction in emissions from commute VMT can be demonstrated through substantial evidence.</p> <p>Check "N/A" if the project is a residential project or if the project would not accommodate more than 25 tenant-occupants.</p>	T-2.2 and T-2.4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>1b. Project Detail:</p> <p>Please substantiate how the project satisfies question 1a.</p> <p>Please see EIR Appendix C-2 (Global Climate Change Evaluation - Otay Ranch Resort Village 13), which demonstrates that the project's TDM measures will result in a greater VMT reduction than otherwise required by this measure.</p> <hr/> <hr/> <hr/>				

¹ Reduction actions and strategies under 1a may be used to achieve a 10% reduction in emissions from commute VMT under 2a

Step 2: CAP Measures Consistency

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Shared and Reduced Parking				
<p>2a. Shared and Reduced Parking</p> <p><u>Non-Residential:</u> For non-residential projects with anticipated tenant-occupants of 24 or less, will the project implement shared and reduced parking strategies that achieves a 10% reduction in emissions from commute VMT?</p> <p>Shared and reduced parking strategies may include, but are not limited to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Shared parking facilities <input type="checkbox"/> Carpool/vanpool-only parking spaces <input type="checkbox"/> Shuttle facilities <input type="checkbox"/> Electric Vehicle-only parking spaces <p>Check "N/A" if the project is a residential project or if the project would accommodate 25 or more tenant-occupants.</p>	T-2.4	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>2b. Project Detail:</p> <p>Please substantiate how the project satisfies question 2a.</p> <p>This measure for non-residential projects is not-applicable as the project principally proposes to establish a residential community with supporting resident-serving uses. It is also assumed that the project would not include 24 or less tenant-occupants; as such, consistency with measure 1a - which applies to projects with 25 or more tenant-occupants - is demonstrated above. Nonetheless, it is noted, that the project will provide designated, preferential parking in the Village Core Planning Area for carpools, vanpools and low-emitting, fuel efficient vehicles in accordance with the TDM Program and applicable provisions of the County's Parking Design Manual (February 2013) addressing "Clean Air Vehicle Parking."</p>				
Water Heating Systems				
<p>3a. Electric or Alternatively-Fueled Water Heating Systems</p> <p><u>Residential:</u> For projects that include residential construction, will the project, as a condition of approval, install the following types of electric or alternatively-fueled water heating system(s)? Please check which types of system(s) will be installed:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Solar thermal water heater <input checked="" type="checkbox"/> Tankless electric water heater <input type="checkbox"/> Storage electric water heaters <input type="checkbox"/> Electric heat pump water heater <input checked="" type="checkbox"/> Tankless gas water heater <input type="checkbox"/> Other <p>Check "N/A" if the project does not contain any residential buildings.</p>	E-1.2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3b. Project Detail:</p> <p>Please substantiate how the project satisfies question 3a.</p> <p>It is anticipated that the project's residences will be equipped with tankless electric or gas water heaters (see, e.g., Tables 1 and 2 of ConSol's Village 13 Building Analysis). Confirmation of such installation shall be verified at building plan check and compliance with this measure shall be made a condition of the project's approvals. It is also noted that the project's recommended mitigation framework for GHG emissions requires project residences to be designated per the CEC's Zero Net Energy standards.</p>				

Step 2: CAP Measures Consistency

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Water-Efficient Appliances and Plumbing Fixtures				
<p>4a. Water Efficient Appliances and Plumbing Fixtures</p> <p><u>Residential:</u> For new residential projects, will the project comply with all of the following water efficiency and conservation BMPs²?</p> <p> <input checked="" type="checkbox"/> Kitchen Faucets: The maximum flow rate of kitchen faucets shall not exceed 1.5 gallons per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons per minute at 60 psi, and must default to a maximum flow rate of 1.5 gallons per minute at 60 psi³. <input checked="" type="checkbox"/> Energy Efficient Appliances: Install at least one qualified ENERGY STAR dishwasher or clothes washer per unit. </p> <p>Check "N/A" if the project is a non-residential project.</p>	W-1.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4b. Project Detail:</p> <p>Please substantiate how the project satisfies question 4a.</p> <p>The project's residences will be equipped with water efficient appliances and plumbing fixtures. More specifically, EnergyStar clothes washers and dishwashers are proposed, as well as low-flow bathroom faucets, kitchen faucets, toilets and showers per the applicable version of the CALGreen Code (Cal. Code Regs., Title 24, Part 11) voluntary measures as specified in this measure. Confirmation of such installation shall be verified at building plan check and compliance with this measure shall be made a condition of the project's approvals.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				
Rain Barrel Installations				
<p>5a. Rain Barrel Installations</p> <p><u>Residential:</u> For new residential projects, will the project make use of incentives to install one rain barrel per every 500 square feet of available roof area?</p> <p>Check "N/A" if the project is a non-residential project; if State, regional or local incentives/rebates to purchase rain barrels are not available; or if funding for programs/rebates has been exhausted.</p>	W-2.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5b. Project Detail:</p> <p>Please substantiate how the project satisfies question 5a.</p> <p>Prior to the issuance of residential building permits and as verified during building plan check, the project applicant or its designee shall submit building plans illustrating that the project would install one rain barrel per every 500 square feet of available roof area, to the extent that State, regional or local incentives/rebates are available to fund the purchase of such rain barrels.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				

² CALGreen Tier 1 residential voluntary measure A4.303 of the [California Green Building Standards Code](#).

³ Where complying faucets are unavailable, aerators or other means may be used to achieve reduction.

Step 2: CAP Measures Consistency

Step 2: CAP Measures Consistency				
Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
Reduce Outdoor Water Use				
<p>6a. Reduce Outdoor Water Use</p> <p><u>Residential:</u> Will the project submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance⁴ and demonstrates a 40% reduction in current Maximum Applied Water Allowance (MAWA) for outdoor use?</p> <p><u>Non-Residential:</u> Will the project submit a Landscape Document Package that is compliant with the County's Water Conservation in Landscaping Ordinance and demonstrates a 40% reduction in current MAWA for outdoor use?</p> <p>Check "N/A" if the project does not propose any landscaping, or if the aggregate landscaped area is between 500 – 2,499 square feet and elects to comply with the Prescriptive Compliance Option within the Water Conservation in Landscaping Ordinance.</p>	W-1.2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6b. Project Detail:</p> <p>Please substantiate how the project satisfies question 6a.</p> <p>The project shall submit a Landscape Document Package that complies with the referenced County Ordinance and demonstrates a 40 percent reduction in current MAWA for outdoor use. The Landscape Document Package shall be submitted to the County for review and approval prior to issuance of any building permits and compliance with this measure shall be made a condition of the project's approval.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				
Agricultural and Farming Operations⁵				
<p>7a. Agricultural and Farming Equipment</p> <p>Will the project use the San Diego County Air Pollution Control District's (SDAPCD's) farm equipment incentive program to convert gas- and diesel-powered farm equipment to electric equipment?</p> <p>Check "N/A" if the project does not contain any agricultural or farming operations; if the SDAPCD incentive program is no longer available; or if funding for the incentive program has been exhausted.</p>	A-1.1	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>7b. Project Detail:</p> <p>Please substantiate how the project satisfies question 7a.</p> <p>The project does not propose any agricultural or farming operations.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>				

⁴ <http://www.sandiegocounty.gov/content/dam/sdc/cob/ordinances/ord10427.pdf>.

⁵ Existing agricultural operations would not be subject to questions 7 and 8 of the Checklist, unless a proposed expansion is subject to discretionary review and requires environmental review pursuant to CEQA.

Step 2: CAP Measures Consistency

Checklist Item (Check the appropriate box and provide an explanation for your answer)	CAP Measure	Yes	No	N/A
<p>8a. Electric Irrigation Pumps</p> <p>Will the project use SDAPCD's farm equipment incentive program to convert diesel- or gas-powered irrigation pumps to electric irrigation pumps?</p> <p>Check "N/A" if the project does not contain any agricultural or farming operations; if the SDAPCD incentive program is no longer available; or if funding for the incentive program has been exhausted.</p>	A-1.2	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

8b. Project Detail:

Please substantiate how the project satisfies question 8a.

The project does not propose any agricultural or farming operations.

Tree Planting

<p>9a. Tree Planting</p> <p><u>Residential</u>: For residential projects, will the project plant, at a minimum, two trees per every new residential dwelling unit proposed?</p> <p>Check "N/A" if the project is a non-residential project.</p>	A-2.1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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9b. Project Detail:

Please substantiate how the project satisfies question 9a.

Both the Otay Ranch Resort Specific Plan and its corresponding Village Design Plan address the establishment of a comprehensive landscape concept for the proposed residential community. Confirmation of the tree plantings required by this measure shall be verified in conjunction with County review of the master landscape plan design and compliance with this measure shall be made a condition of the project's approvals.

ATTACHMENT

CAP Measure 1a

Alternative H would result in 76,321,614 total annual vehicle miles traveled (VMT) before implementation of the identified transportation demand management strategies (Chen Ryan 2019). Based on an analysis of commute-related trips, Alternative H would employ 382 people who would account for 5% of the entire VMT. In addition, Alternative H would employ 65 employees at the elementary school and 5 public service employees (four firefighters and one sheriff). The employees account for 5.99% of the total VMT. Alternative H's commute-related trips, therefore, would result in approximately 4,589,617 annual VMT. A 15% reduction for all commute-related VMT, as required by Measure 1a in the CAP Consistency Checklist, would be equal to approximately 688,433 annual VMT. As detailed in Table 1 below, TDM Measures 1, 2, 3, and 4 result in a 1.975% project-wide VMT reduction, which equates to an annual VMT reduction of approximately 1,513,271 and thereby exceeds the commute-related VMT reduction requirements of CAP Measure 1a.

Table 1
Alternative H VMT Reductions Applicable to Project Non-Residential Land Uses

TDM Measure #	Transportation Demand Management Strategies	Non-Residential % VMT Reduction
1	Pedestrian/Bicyclist Trails Network	0.625
2	Bicycle Racks	
3	Ride-Sharing Programs	0.75
4	Promote Websites for Transportation Options	0.6
5	Create New Resident Information Packet	NA
6	Provide School Pool Program	NA
7	Traffic Calming Features	NA
	Total VMT Reduction %	1.975%
	Total Proposed Project Annual VMT Reduction	1,513,271

Source: Chen Ryan, Transportation Demand Management Program – Otay Ranch Resort Village Alternative H. January 14, 2019.
Notes: % = percent; NA = not applicable; VMT = vehicle miles traveled; TDM = Transportation Demand Management.

Attachment GR.R2.2

APPENDIX 8-4
Response to CAP Litigation

**Response to Letters from Latham & Watkins LLP and Chatten-Brown &
Carstens LLP on behalf of the Golden Door Properties, LLC and the Sierra Club
dated September 17, 2018 and September 18, 2018**

1. Introduction

The comment letters submitted by Latham & Watkins LLP on behalf of Golden Door Properties, LLC (“Golden Door”), dated September 17, 2018, and Chatten-Brown & Carstens LLP on behalf of the Sierra Club, dated September 18, 2018, are late letters that do not require a written response from the County.

Under CEQA Guidelines Section 15105, the County was legally required to provide a 45-day public review period on the Draft EIR. In order to provide additional time, the County instead afforded 60 days for public review and comment. The public comment period for the Draft EIR began on June 15, 2017 and ended on August 14, 2017. All comment letters received after expiration of the public review and comment period ending on August 14, 2017 are considered late comments.

A lead agency is required to consider comments on the Draft EIR and to prepare written responses if a comment is received within the public comment period. (Pub. Resources Code, §21091(d); CEQA Guidelines, §15088.) When a comment letter is received after the close of the public comment period, however, a lead agency does not have an obligation to respond. (Pub. Resources Code, §21091(d)(1); Pub. Resources Code, §21092.5(c).) Accordingly, the County is not required to provide a written response to late comment letters, including the September 17 and September 18, 2018 letters from Latham & Watkins and Sierra Club. (See, CEQA Guidelines, §15088(a)).

Nonetheless, for informational purposes, the County has elected to respond to these late letters, but without waiving its position that written responses to late comment letters are not required by law.

2. The Court’s Order in the Actions Challenging the 2018 Climate Action Plan Does Not Prohibit the County from Considering the Project

The letters state that the County should suspend processing the Newland Sierra project (“Project”) and all General Plan Amendment (“GPA”) projects that rely on “out-of-County carbon offsets” because the Court in the actions challenging the 2018 Climate Action Plan (“CAP”) issued an order prohibiting the County from approving projects that use CAP Mitigation Measure M-GHG-1. The County does not concur with these comments for the reasons that follow.

A. The Newland Sierra Project’s EIR does not use, rely, depend on, or tier from CAP Mitigation Measure M-GHG-1

Golden Door states that the Newland Sierra EIR’s “current GHG mitigation measures (which specifically reference, include, and rely on ‘M-GHG-1’) ... constitute ‘use’ of or ‘reliance’ on the County’s new offset provision, M-GHG-1, and would therefore be in violation of the attached injunction from the Court.” (Golden Door letter, pp. 1-2.) However, as shown throughout these proceedings, the Newland Sierra EIR does not use, rely on, or tier from the CAP or its certified Supplemental EIR (including M-GHG-1 therein).

First, the Newland Sierra Draft EIR, including the commitment of the project applicant to achieve no net increase in GHG conditions over baseline conditions, predates the County's public release of the Draft CAP and associated Supplement to the GPU Program EIR ("CAP Supplemental EIR"). Specifically, the Notice of Preparation of the Project's EIR was publicly released in February 2015; and the Notice of Preparation of the CAP Supplemental EIR was not released until October 2016. Further, the Newland Sierra Draft EIR was publicly released in June 2017; and, thereafter, the County publicly released the draft CAP and associated EIR in August 2017. As such, Section 2.7, Greenhouse Gas Emissions, of the Draft EIR contained the following singular reference to the CAP when discussing the regulatory backdrop for the environmental analysis:

The County of San Diego (County) is in the process of development a Climate Action Plan (CAP) that will serve as a comprehensive strategy guide to reduce GHG emissions in the unincorporated communities of San Diego County. The Climate Action Plan will outline specific reduction methods residents and businesses can implement to reduce GHG emissions and aid the County meeting state-mandated GHG reduction targets. The County Climate Action Plan is anticipated to be completed by winter 2018.

(Newland Sierra Draft EIR, p. 2-7-26.) The CAP was not at all discussed in the Draft EIR's impact analysis because it did not exist.

Second, while Section 2.7, Greenhouse Gas Emissions, of the Newland Sierra Final EIR contains additional information on the CAP (because it was adopted following circulation of the project's Draft EIR), it explains that the Project "is not eligible for CEQA streamlining under the CAP" and that it provides other grounds (selected in accordance with CEQA Guidelines Section 15064.4 and Appendix G, and previously set forth in the Draft EIR) for determining the significance of the project's GHG emissions. (Newland Final EIR, p. 2.7-44.)

Nonetheless, Section 2.7 notes that the Project would implement all applicable CAP reduction measures, and achieve net zero GHG emissions through use of on-site and off-site reduction strategies (including carbon offsets). (*Ibid.*) As such, the Project would be "consistent" with the CAP. As explained below, however, consistency is not synonymous with reliance on a plan. Conflation of these two concepts — consistency and reliance — is misguided and not supported by the evidence in the record.

Third, if the Newland Sierra EIR had failed to assess the project's "consistency" with the CAP, Golden Door and the Sierra Club would have asserted that the CAP was an applicable plan that was required to be considered for consistency in the Newland Sierra EIR (citing CEQA Guidelines §15125(d)). However, now that the CAP has been adopted, and the Newland Sierra Final EIR considered the previously-developed mitigation framework of the Newland Sierra project for "consistency" with the CAP, Golden Door argues that the Project must be exclusively beholden to the CAP, with no other CEQA compliance pathway opportunities available to project applicants. The argument is contrary to CEQA and without merit.

Fourth, the Newland Sierra Final EIR contains Topical Response GHG-3: County's 2018 Climate Action Plan and that topical response makes clear that the Newland Sierra EIR expressly did not use, rely on, or tier from the CAP because of the long-standing CAP litigation. For that reason, the

Newland Sierra EIR provided a separate, stand-alone basis for its finding that the project's GHG emissions would not significantly impact the environment with implementation of its own mitigation measures:

It is important to note that the CEQA analysis prepared for the project's Draft EIR did not use, rely on, or tier from the CAP to streamline the project's environmental analysis. Rather, the Draft EIR rendered significance determinations (using the criteria contained in CEQA Guidelines Appendix G, and informed by CEQA Guidelines Section 15064.4 and 15126.4) that are independent of the CAP. *As such, in the event that the CAP does not withstand judicial scrutiny, the project's EIR would continue to provide a separate, stand-alone basis for the finding that the project's GHG emissions would not significantly impact the environment, with implementation of its own EIR Mitigation Measures M- GHG-1 through M-GHG-3.*

On this point, the County notes that the commitment of the project to achieve carbon neutrality, and the Draft EIR's corresponding basis to determine that impacts would be less than significant with mitigation, is supported by CEQA, State guidance, and case law. For example, the overall approach presented in the project's EIR (i.e., attainment of net zero GHG emissions through utilization of a portfolio of on- and off-site reduction strategies) accords to the approach developed by the State of California (and specifically the California Department of Fish and Wildlife and California Air Resources Board) for the Newhall Ranch Project, as well as the approach described for project-level CEQA analysis by the California Air Resources Board in its adopted *California's 2017 Climate Change Scoping Plan*.

(Newland Sierra Final EIR, Topical Responses, p. 94; italics added and in original.)

In other words, the Newland Sierra EIR *considers* the CAP, because it is prudent to do so under relevant provisions of CEQA (see, e.g., CEQA Guidelines Section 15125(d)). However, *consideration* of a plan does *not* equate to *reliance* on a plan.

- i. The County's CAP Mitigation Measure M-GHG-1 requires in-process and future GPAs to conduct a General Plan "consistency" evaluation

As stated, Golden Door and the Sierra Club incorrectly conflate consideration of in-process and future GPA projects for CAP consistency with using, relying on, or tiering from the CAP. As stated above, GPA project consideration of the CAP for consistency is not synonymous with using or relying on the CAP.

More specifically, GPA projects are required by CEQA to consider whether they conflict with applicable adopted plans. (See, e.g., CEQA Guidelines §§15064.4(b)(3), 15125(d); CEQA Guidelines Appendix G, Section VII(b).) For in-process and future GPA projects, this means those project EIRs must demonstrate consistency with the CAP." The Newland Sierra Final EIR

evaluated the Project's consistency with the CAP as a net zero GPA project (Option 2). The Project's Final EIR and record demonstrate the Project's consistency with the County's CAP.

Consistency with the CAP, however, is different than using, relying on, or tiering from the CAP. Here, the Project (and other GPA projects) conducted project-level GHG analysis based on separate CEQA compliance pathways to determine the significance of the project's GHG emissions, and proposed its own mitigation requirements. GPA projects with net zero GHG emissions like Newland Sierra do not interfere with the County's ability to meet its share of statewide GHG emissions reductions. The Project's Final EIR conducts the required consistency analysis and finds that the Project is consistent with the County's adopted CAP. It does not use, rely on, or tier from the CAP.

Golden Door selectively quotes from County Counsel's opposition briefs in the CAP litigation (which is discussed further below); however, taken as a whole, the briefing is consistent with the County's long-standing position as reflected in the EIRs and records of pending GPA projects. That position is that if the Court were to not allow the County to consider GPA projects that do not use, rely on, or tier from the CAP, the Court's order would exceed the relief sought in the CAP litigation and force the County to take several costly affirmative acts. (See, e.g., the County's Sur-Reply, filed Sept. 13, 2018, p. 5.) Fortunately, the Court's order does no such thing.

ii. Even if Golden Door were to prevail in the CAP litigation, the GPA projects, including Newland Sierra, would not be affected

The Court's stay/injunction should be interpreted by reference to the potential relief that may be afforded to Golden Door and the Sierra Club if they prevail in the CAP litigation. Any relief afforded by the Court would need to directly relate to the project before it, namely, the CAP. Therefore, should the Court find that the CAP and its EIR do not withstand judicial scrutiny, it may direct that the County set aside all or portions of its CAP and EIR. Such an occurrence would return the County to the same position that existed pre-February 2018; namely, no CAP would be in place that would need be considered as part of the CEQA process, and projects requiring discretionary approvals would be required under CEQA to evaluate and mitigate environmental impacts without reference to a CAP.

This is the same factual setting in which the Newland Sierra EIR was prepared; it was prepared at a time when no CAP was in place. As such, and as explained throughout the EIR, the significance of the project's GHG emissions was evaluated not by use of or reliance on the CAP or its mitigation. To the contrary, non-CAP CEQA compliance pathways were used and relied upon, consistent with the guidance from the California Air Resources Board, State law, the 2015 California Supreme Court's decision in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife*, 62 Cal.4th 204 (2015) (*Newhall Ranch*), and other scientific experts.

iii. The approach taken in the Newland Sierra EIR must be understood in historical context

Historical context also is critical to understand the approach taken by the County and applicants seeking project-specific GPAs. As made clear in the Court's order, the County's CAP has been the subject of controversy and litigation since the first CAP was adopted in 2012. And, that

controversy has not slowed with the County's adoption of the second CAP in 2018. To the contrary, two additional lawsuits specific to the 2018 CAP have been filed, in conjunction with the continuing pendency of the 2012 lawsuit. As such, and because the County neither places nor is required to place a moratorium on its evaluation of private applicant-sponsored projects while it prepares its own plans, many EIRs prepared by the County for specific projects have presented CEQA analytical pathways that are independent of and untethered to the CAP, in order to avoid adverse implications associated with the CAP's continuing uncertainty due to litigation.

Despite the County's decision to conduct a stand-alone environmental review for the Newland Sierra project independently of the then-forthcoming CAP, Golden Door now represents to the Board that, prior to the County's adoption of M-GHG-1 in conjunction with the February 2018 approvals for the CAP, "the County provided no authority or authorization for projects to use 'out of county' or 'off-shore offsets.'" This is misleading.

The authority to utilize carbon offsets, as explained repeatedly throughout the Newland Sierra EIR, stems from CEQA Guidelines Section 15126.4(c)(3)-(4), and has been recognized and affirmed by the California Air Resources Board, the California Department of Fish and Wildlife, and multiple air districts.

Further, contrary to Golden Door's representations, there is precedent in the County for use of carbon offsets. More specifically, when approving the Soitec Solar Development Project in February 2015 and the Lake Jennings Marketplace Project in January 2018, the County required, as a condition of approval, use of voluntary carbon offsets from a qualified GHG emission broker to offset total projected construction and operational GHG emissions.¹ The approach taken by the Soitec Solar Development Project, a certified AB 900 project,² and the Lake Jennings Marketplace Project is analogous to the approach set forth in the Newland Sierra EIR. The Board of Supervisors also approved the Sweetwater Vistas, Sweetwater Place, and Park Circle Projects with the use of carbon offsets in late 2017, prior to adoption of the CAP.

B. The CAP Proceedings Do Not Support the Claim that Hearing the Project Violates the Court's Ruling

- i. Golden Door's briefing shows the Court's ruling has no effect on the Newland Sierra project

¹ See https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/3.1.3_GreenhouseGasEmissions.pdf and [https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/LakeJenningsMarketplace/FinalEIR/2.3_Greenhouse%20Gas%20Emissions%20\(Aug%202017\).pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/LakeJenningsMarketplace/FinalEIR/2.3_Greenhouse%20Gas%20Emissions%20(Aug%202017).pdf).

² AB 900 projects are referred to as "environmental leadership" projects, and — when designated by the California Governor and CARB — are afforded meaningful CEQA streamlining benefits set forth in the Public Resources Code. AB 900 projects routinely use off-site carbon offsets to achieve the GHG neutrality eligibility requirement.

Prior to the Court's ruling, Golden Door's counsel made several notable concessions concerning the requested relief in the CAP litigation. These concessions show that the County would not violate the Court's ruling by moving forward with the pending GPA projects.

For example, Golden Door states:

The proposed stay is narrowly defined. ... Any applicant may proceed with their proposed General Plan amendment, but would only be precluded from relying on the CAP's offset program provided under MM GHG-1. The County is free to consider any such project that does not require reliance on this offset program.

(Golden Door Application for Stay, p. 20.)

Further, Golden Door makes clear:

[T]he County may continue to process and consider General Plan amendments under the proposed stay, so long as they do not rely on the program included in M-GHG-1 to mitigate a project's GHG impacts.

(Golden Door Reply to Application for Stay, p. 9.) Additionally, Golden Door concedes:

The requested relief does not require the County to stop processing these projects, nor does it dictate the County's decision on any of these projects. If it is true, as the County repeatedly argues, that none of the projects in process actually rely on the 2018 CAP approvals, the projects may nonetheless proceed even if a stay is granted.

(Golden Door Reply to Application for Stay, p. 11.)

The above concessions are in conflict with the statements made in Golden Door's September 17, 2018 letter. Golden Door's counsel also participated in the Court's CAP hearing on the stay/injunction and never took the position that the County would "violate" the Court's then tentative ruling, as now indicated in the Golden Door letter.

- ii. Comparing the Sierra Club's [Revised Proposed] Order to the Court's signed Order demonstrates the Court's ruling does not apply to the pending GPA projects

Prior to the Court's final ruling, the Sierra Club submitted a revised proposed order containing the following operative language:

During its review of greenhouse gas ("GHG") impacts of development proposals on unincorporated County lands under the California Environmental Quality Act ("CEQA"), the County is stayed and/or enjoined from relying upon Mitigation Measure M-GHG-1, as contained within the County of San Diego Supplement to the 2011 General Plan Update Program

Environmental Impact Report, dated January 2018, *or any other out-of-County carbon credits used to offset a Project's GHG impacts.*

The Court's final ruling *rejected* the Sierra Club's text in bold italics, above. Specifically, the Court's Order granting the stay/injunction contains the following operative language:

During its review of greenhouse gas ("GHG") impacts of development proposals on unincorporated County lands under the California Environmental Quality Act ("CEQA"), the County is stayed and/or enjoined during the pendency of this matter *from relying upon Mitigation Measure M-GHG-1, as contained within the County of San Diego Supplement to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018. ...*

(Order Granting Stay and Preliminary Injunction, p. 2, italics added.)

As evidenced by the above comparison, the Court was unwilling to extend its stay/injunction to include projects that do not rely on the CAP mitigation (M-GHG-1), but do use out-of-County carbon offsets.

- iii. The Reporter's Transcript illustrates Golden Door's acceptance of the scope of the stay/injunction without asserting the County would violate the Court's ruling if it went forward with individual projects

Before signing the Order Granting Stay and Preliminary Injunction, the Court held a hearing, counsel arguments were memorialized in the September 14, 2018 Reporter's Transcript, and Golden Door's counsel (Chris Garrett) conceded Golden Door was comfortable with the "scope" of the Court's stay/injunction, without asserting the County would violate the Court's ruling if it went forward with regard to individual projects:

Mr. Garrett: ... And *we're comfortable*, Your Honor, with the Court's language in the ... *tentative*, and ... we would *accept* that *scope*. However, the county may have something different to say.

And then the third point is that, I believe the county has different ideas and procedures for how they might seek exceptions and clarifications to the Court's ruling that, you know, can't be done today. ... I think what they may say is that they would like to get things *clarified with respect to individual projects*. And what I'm worried about is that in the course of the hearing today that might be invited error by the Court's part. That *I know the Court has been very eager to be sure, and we agree that, to the extent to which the Court is going to be making decisions about individual projects, rather than the matter in the project that's before the Court, that has to be done based on a record as to those projects, you know, with the opportunity for counsel for real parties, whoever, to participate* if they want to.

(RT, p. 6, italics added.)

In short, Golden Door concedes that the project before the Court (i.e., the County's CAP) is not the individual GPA projects. Instead, those other separate projects will have to be considered based on their own record and with opportunities for those project applicants and their counsel to participate in proceedings, separate and apart from the CAP litigation, *if* such projects are approved.

Consistent with the above, Golden Door's counsel expressed his "biggest concern:"

Mr. Garrett: ...[M]y biggest concern ... is that the county will try to make it so complicated that the Court will back off of the tentative, and then secondly, that the Court may be invited to start enmeshing itself in the details of particular projects which ... I think could be done in a *separate proceeding with a record with other parties* if that's what the county wants to do after the injunction and stay is issued.

(RT, p. 7, italics added.)

As noted, Golden Door's counsel did not assert that if the County goes forward with hearings for individual GPA projects and approves such projects, it will violate the terms and conditions of the Court's ruling. To the contrary, Golden Door's counsel advocated issuance of the stay/injunction, followed by *separate* proceedings based on project-specific records *and participation* of GPA project applicants and their counsel.

In response to Golden Door's counsel's arguments, the Court also made clear it would *not* stay and/or enjoin the County from proceeding with other separate GPA projects, absent the project applicants *because their due process rights would be affected*. The Reporter's Transcript states:

Mr. Garrett: ...What I'm concerned about is that the county is inviting the Court to make ... a due process error by inviting the Court to examine the records of particular proceedings, which I don't think is necessary.

The Court: *In the absence of project applicant* [?]

Mr. Garrett: That's correct. And so what I'm saying ...

The Court: *I would not do that.*

Mr. Garrett: Right. Okay, well then great. ...

The Court: *I would not do that because that would affect the due process rights of that project applicant, and absent an intervention by that project applicant I don't think it would be right for me to be making decisions about that project applicant's project, do you?*

Mr. Garrett: *No, I don't at all.* ...

The Court: That's where I thought you were going. I just wanted to make sure that I was [comprehending] accurately what you were saying.

Mr. Garrett: That's right.

The Court: Okay.

(RT, pp. 11-12, italics added.)

As shown by the Court's comments, above, the Court was concerned about issuing a stay and/or injunction that would adversely affect the due process rights of non-parties to the CAP litigation. Indeed, the Court made clear it "*would not do that.*"

As a result, the County does not concur that the Board will "violate" the Court's ruling by considering and potentially approving or conditionally approving the Newland Sierra project, or any other GPA project that does not use, rely or depend on, or tier from the CAP or its mitigation (M-GHG-1).

- iv. The Court's September 14, 2018 Minute Order does not enjoin the County from moving forward with the pending GPA Projects (including the hearing on the Newland Sierra EIR and project)

In the Latham & Watkins letter, Golden Door's counsel selectively quotes from page 7 of the Court's ruling. The full context of the Court's ruling makes clear it does not enjoin the County from moving forward with the pending GPA projects, including the Newland Sierra hearing currently scheduled for September 26, 2018. In context, the Court's ruling provides:

The County is prohibited from using its new offset proposal for approvals of pending General Plan amendments until the court's final judgment in these proceedings or further order of the Court of Appeal.

A stay is granted to ensure that the carbon offset program in M-GHG-1 is consistent with the County's General Plan that requires GHG reductions to occur within the County. ... A stay does not enjoin the County from considering projects; only use of the CAP offset program provided in M-GHG-1 is stayed. The stay does not preclude projects currently in process, if the projects do not utilize the offset program provided in M-GHG-1.

(Court Minute Order, p. 7, italics added.)

The Newland Sierra record demonstrates the County is not using, relying or depending on, or tiering from the County's CAP or its mitigation. Thus, on its face, the Court's Minute Order is not implicated or violated because the order only prohibits the County from "using" its CAP offset program for approving pending GPA projects. If such projects do not use, rely or depend on, or tier from the County's CAP or its mitigation, there can be no violation of the Court's ruling.

Other portions of the Court's Minute Order are pertinent and not cited by Golden Door. For example, the Court's ruling confirms:

The stay/injunctive relief does not prohibit all projects, only those reliant on the use of the program set forth in M-GHG-1. The stay/injunctive relief

does not enjoin the use of the CAP in its entirety for all potential development. While the stay or injunctive is in place, *the County may consider any project that does not depend on the use of the M-GHG-1 program.*

(*Id.* at p. 8, italics added.)

Based on the above ruling, the County may consider any GPA project so long as those projects do not use, rely or depend on, or tier from the mitigation contained in the County's CAP. Further, the best evidence is found *not* in the pleadings and documents comprising the CAP litigation, but rather the EIRs and administrative records of each of the GPA projects. Those project-level EIRs and records constitute the best evidence that such projects do *not* use, rely or depend on, or tier from the CAP or its mitigation.

Further, the Court Minute Order clarified:

A stay and/or preliminary injunction *does not preclude the project proponents from pursuing their projects.* Also, the projects *may proceed, if the projects do not rely on the M-GHG-1 offset program.*

(*Ibid.*, italics added.)

This portion of the Court's ruling makes clear that the GPA projects "may proceed, if the projects do not rely on the [CAP] M-GHG-1 offset program." (*Ibid.*)

- v. The Court's final "Order Granting Stay and Preliminary Injunction" is not an impediment to moving forward on the pending GPA projects

On September 14, 2018, after the Court's Minute Order was issued, the Court prepared and signed its own "Order Granting Stay and Preliminary Injunction." The Court made clear that its signed order "was consistent" with its Minute Order. (Court Minute Order, p. 8.) In the final "Order Granting Stay and Preliminary Injunction," the Court stated:

1. During its review of greenhouse gas ("GHG") impacts of development proposals on unincorporated County lands under the California Environmental Quality Act ("CEQA"), the County is stayed and/or enjoined during the pendency of this matter *from relying upon Mitigation Measure M-GHG-1, as contained within the County of San Diego Supplement to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018.* This stay and injunction remains in effect pending a decision on the merits of the case.

(Order Granting Stay and Preliminary Injunction, p. 2, italics added.)

Again, the Court made clear that the County is stayed and/or enjoined from "relying upon" M-GHG-1, as contained in the CAP Supplemental EIR.

The County has reviewed the EIRs and administrative records with regard to the pending GPA

projects cited by Golden Door and the Sierra Club. Based on the information in those records, the County finds that these projects do not rely on M-GHG-1, as contained in the CAP Supplemental EIR.

In sum, there is no “violation” of the Court’s ruling or order, and no reason exists to “remove” all GPA projects from the Board’s agendas.

3. Interpretation of the County’s General Plan

Though not addressed in these specific Golden Door and Sierra Club letters, in the CAP litigation, Golden Door and the Sierra Club contend that the use of carbon offsets from outside of the County is inconsistent with the County’s General Plan Update (“GPU”) Program EIR Mitigation Measure (“MM”) CC-1.2, which they say geographically limits reductions in GHG emissions to offset projects *within* the County only. As such, they contend the use of offsets in CAP Supplemental EIR Mitigation Measure M-GHG-1 is inconsistent with MM CC-1.2.

As explained below, the County does not agree with this interpretation of its General Plan language. As explained below, the County finds there is no geographic limitation on where carbon offsets may occur, whether within the County or outside the County, in its General Plan goals or policies, or in MM CC-1.2.

County General Plan Goal COS-20, titled, “**Governance and Administration**,” states:

Reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions contributing to climate change that meet or exceed requirements of the Global Warming Solutions Act of 2006, as amended by Senate Bill 32 (as amended, Pavley. California Global Warming Solutions Act of 2006: emissions limit).

(County General Plan, Conservation and Open Space Element, p. 5-38.)

County Policy COS-20.1, titled, “**Climate Change Action Plan**,” states:

Prepare, maintain, and implement a Climate Action Plan for the reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions consistent with the California Environmental Quality Act (CEQA) Guidelines Section 15183.5.

(County General Plan, Conservation and Open Space Element, p. 5-39.)

GPU Program EIR MM CC-1.2 implements General Plan Goal COS-20 and General Plan Policy COS-20.1, as shown:

Prepare a Climate Action Plan for the reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions consistent with State legislative targets, *as described in General Plan Goal COS-20*, and *consistent with CEQA Guidelines Section 15183.5* or as amended, *as referenced in General Plan Policy COS-20.1*. ...

(Errata No. 1, Board of Supervisors Hearing, Feb. 14, 2018, Item No. 1, Attachment F-1, Ex. A; italics added.)

In interpreting GPU Program EIR MM CC-1.2, Golden Door and the Sierra Club contend all GHG reductions must occur within the unincorporated County. Such an interpretation is inconsistent with the plain meaning of MM CC-1.2.

MM CC-1.2 requires preparation of a CAP that reduces GHG emissions from community-wide and County operations. Neither MM CC-1.2, Goal COS-20, nor Policy COS-20.1 place a geographic limit on where GHG reductions must occur. Said differently, community-wide and County operational GHG emissions must be reduced, and that reduction is not geographically limited by any term or phrase in MM CC-1.2, Goal COS-20, or Policy COS-20.1. Indeed, the County submits that such reductions can and should occur through all available means, including carbon offsets within the County, offsets in the region, offsets in California, offsets in the U.S., and offsets internationally. If the County intended General Plan Goal COS-20 to be interpreted as suggested by Golden Door and the Sierra Club, the Goal would have stated that the County is to prepare a CAP to reduce community-wide and County operational GHG emissions *only through reduction strategies undertaken within the unincorporated County boundary*. General Plan Goal COS-20, Policy COS-20.1, and MM CC-1.2 say no such thing.

The County's interpretation of its own General Plan and associated mitigation as not imposing geographical restrictions on GHG reduction strategies is consistent with the global nature of GHG emissions and the science that GHG emissions do not remain within any particular air basin, but rather are distributed throughout the earth's atmosphere. The interpretation set forth by Golden Door and the Sierra Club is contrary to this science and the regulatory guidance found in CEQA (CEQA Guidelines, §15126.4), the California Air Resources Board's Scoping Plan, the statewide Cap-and-Trade program, case law, and other statewide laws and regulations. Indeed, at the time the County adopted its CAP and related mitigation, the California Supreme Court had already addressed the global nature of GHG emissions in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, and the County was aware of that decision well before adopting the CAP and related mitigation. The California Supreme Court — agreeing with scientific experts — recognized “the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local.” (*Center for Biological Diversity*, 62 Cal.4th at pp. 220-221.) Importantly, in interpreting its own General Plan, the County is guided by basic principles of plain meaning, context, and avoiding absurd results. For example, when considering the CAP and its associated mitigation, the County was aware of Goal COS-20 and Policy COS-20.1. The County CAP mitigation (M-GHG-1) includes a geographic priority for reducing GHG emissions, with a focus on on-site reductions through project design features and mitigation, and offsets within the County, California, the U.S., and internationally. (See Newland Sierra EIR Appendix JJ-21, which contains excerpts from the County Supplement to the 2011 GPU Program EIR (Jan. 2018); refer specifically to Master Response 12, p. 8-52, therein.) As such, when adopting its CAP (at which time it also amended Goal COS-20), the County noted:

The County performed a search of these registries for the location of projects that are listed to sell carbon credits. At the time of this writing [Jan.

2018], there is one project out of approximately 650 projects listed on CARB-approved registries located within San Diego County. The project is a reforestation project located in Cuyamaca State Park and the credits are not listed because the trees have not reached maturity. *Therefore, there is very little opportunity currently to purchase carbon offset credits within San Diego's unincorporated area and the County will allow the use of offset credits from outside of the boundaries of unincorporated area as directed under CAP Mitigation Measure M-GHG-1.*

(See Newland Sierra EIR Appendix JJ-21, which contains excerpts from the County Supplement to the 2011 GPU Program EIR (Jan. 2018); refer specifically to Master Response 12, p. 8-53, therein.)

It would be an absurd result for the County to place a geographic limitation on where GHG mitigation must occur, while at the same time recognizing the extremely limited “opportunity” to purchase carbon offsets within the unincorporated County area. The result also would be absurd because the effect of such a limitation would be to prevent some projects from fully mitigating GHG emissions where feasible mitigation (offsets) is otherwise available. This would effectively force projects to cause significant GHG impacts, and to take significant unavoidable GHG impact findings with overriding considerations (authorized by CEQA), which has the anti-environmental effect of exacerbating GHG emission increases (not avoiding or minimizing them).³

In short, the County finds that reductions that occur elsewhere are just as effective at addressing GHG emissions, and no evidence exists that the County intended to eliminate this effective reduction opportunity with its General Plan goals or policies, or by MM CC-1.2. Thus, the General Plan does not prohibit, nor was it intended to prohibit out-of-County offsets as a tool in reducing global GHG emissions.

Please also refer to Response to Comment O-1-142, Appendix DD, and Appendix JJ-21 (in particular GPU Program EIR Supplement, EIR Master Response 12 – Mitigation Hierarchy and Use of Carbon Offset Credits therein).

Even if General Plan Goal COS-20, Policy COS-20.1, and MM CC-1.2 continue to be misinterpreted as requiring offsets within the County (an erroneous interpretation), the Newland Sierra Final EIR mitigation (MM-GHG-1 and MM-GHG-2) impose a geographic priority system with respect to the purchase of carbon offsets, with the highest level of priority given to local offsets. This mandated priority system is compatible with the erroneous interpretation of General Plan Goal COS-20 (and other implementing mitigation) offered by Golden Door and the Sierra Club, because a given project need not be in “perfect conformity” with a general plan goal or policy. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 637.)

³ Surprisingly, the local Sierra Club Chapter appears to be arguing against implementing carbon offsets (regardless of the location or source) from reputable CARB-approved registries; offsets that benefit the environment in response to the global nature of GHG emissions.

Relatedly, General Plan Goal COS-20 must also be read in the context of the policies that guide its implementation. As background, the relationship between Goals, Policies, and Implementation Measures is described in the County General Plan on pages I-5 and I-6:

- (a) Goals describe *ideal future conditions* for a particular *topic*, such as town centers, rural character, protection of environmental resources, traffic congestion, or sustainability. Goals tend to be *very general and broad*.
- (b) *Policies provide guidance* to assist the County as it makes decisions relating to each goal and indicates a commitment by the County to a particular course of action. The policy is carried out by implementation measures. While every effort has been made to provide clear and unambiguous policies, the need for interpretation will inevitably arise. The authority of interpretation lies with the County and will be enacted through its implementation measures and decisions. Therefore, the Implementation Plan should be reviewed for a complete understanding of each policy.
- (c) Implementation Measures, adopted by the County in a separate Implementation Plan, identify all the specific steps to be taken by the County to implement the policies. They may include revisions of current codes and ordinances, adoption of plans and capital improvement programs, financing actions, and other measures that will be assigned to different County departments after the General Plan is adopted.

For Goal COS-20, the General Plan does not set forth policies envisioning direct application to individual projects, but rather policies envisioning changes to County operations and the creation of applicable plans.

Policy COS-20.1 directs the County to implement a Climate Action Plan. The policy is not applicable to individual projects (like the pending GPA projects, including Newland Sierra). And, CEQA Guidelines Section 15064.4 does not require that the County use a climate action plan to evaluate the environmental significance of a project, and for the reasons set forth in Topical Response GHG-3, the Newland Sierra project does not use, rely on, or tier from the County's 2018 Climate Action Plan (or its mitigation).

In the context of global climate change, this structure provides the necessary flexibility to address the multi-faceted and inter-related tools to reduce overall GHG emissions.